

7:13-CR-74-BR-2  
7:14-CV-202-BR

**Respondent.**

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connection with a summary judgment motion. *Doe*, 749 F.3d at 267. Here, the documents sought to be sealed have been filed in connection with or relate to a petition and motion (*i.e.*, the government's motion to dismiss at D.E. 98) that seek dispositive relief, and therefore the right of access at issue as to those arises under the First Amendment. *See Rushford v. New Yorker Magazine*, 846 F.2d 249, 252-53 (4th Cir. 1988).

While the presumption of access under the common law is not absolute and its scope is a matter left to the discretion of the district court, “[w]hen the First Amendment provides a right of access, a district court may restrict access ‘only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest.’” *Virginia Dep’t of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004). The burden of establishing the showing necessary to overcome a First Amendment right of access falls upon the party seeking to keep the information sealed. *Id.* Specific reasons must be presented to justify restricting access to the information. *Id.* (citing *Press-Enterprise Co. v. Superior Court*, 478 U.S.1, 15 (1986) (“The First Amendment right of access cannot be overcome by [a] conclusory assertion”)).

Here, the government seeks the sealing of the joint exhibits and unredacted version of the ICE investigation report because they contain confidential personally identifiable information relating to petitioner and non-parties and were compiled in connection with the underlying criminal investigation of petitioner. The government contends that sealing the material is needed to preserve its confidentiality. The court agrees that the material is of a confidential nature. It therefore finds that the presumption of access has been overcome.

In addition, the public must be given notice of a request to seal and a reasonable opportunity to challenge it. *In re Knight Publishing Co.*, 743 F.2d at 235. Here, the motion to


seal was filed on 5 August 2015. No opposition to either motion has been filed by any non-party despite a reasonable opportunity to do so.

Finally, the court is obligated to consider less drastic alternatives to sealing, and where a court decides to seal documents, it must "state the reasons for its decision to seal supported by specific findings and the reasons for rejecting alternatives to sealing in order to provide an adequate record for review." *Id.* Because, as discussed, the exhibits in question contain confidential personally identifiable information and redaction of the confidential information would remove nearly all of the information contained therein, the court finds that alternatives to sealing do not exist at the present time.

### CONCLUSION

For the foregoing reasons, IT IS ORDERED that the government's consent motion (D.E. 118) to seal is ALLOWED. The Clerk is DIRECTED to permanently seal the parties' five joint exhibits and to permit the redacted version of Government's Exhibit 4 (D.E. 117) to remain partially sealed in accordance with Local Civil Rule 79.2, E.D.N.C., except as may otherwise in the future be ordered by the court.

SO ORDERED, this 9th day of September 2016.

  
James E. Gates  
United States Magistrate Judge